Project Report

REVIEW OF THE DIAND FORESTRY DECISION MAKING PROCESS IN THE YUKON REGION

Prepared for

Audit and Evaluation Branch
Department of Indian and Northern Development

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EXECUTIVE SUMMARY

INTRODUCTION

The purpose of this report is to present a review of the events, decisions, actions and effects of decisions relating to the Yukon forest industry in 1995. It presents the review issues, the methods used in the review, background information, detailed information on the process, findings and associated recommendations.

Sources of information included key participants in the process, both internal and external to the Department. Among those interviewed outside DIAND were representatives of the Yukon Forest Industry, participating and non-participating First Nations, community stakeholders and forestry experts. File reviews were undertaken at DIAND headquarters and in the Yukon Regional Office.

BACKGROUND/POLICY ENVIRONMENT

The expectation that responsibility for forest management would devolve to the Yukon Territorial Government, meant that few resources had been directed by DIAND towards forest management other than the fire protection program. Moreover, in anticipation of devolution, all of DIAND's professional foresters in the Yukon had left the program by early 1995 and had not yet been replaced.

In 1994, DIAND officials began seriously to consider amending the Timber Regulations to increase the stumpage fees. Policy responsibility for initiating a change in the Yukon Timber Regulations (YTRs) and for the decisions related to that process rested with the most senior staff of the Yukon Regional Office and with senior departmental staff at Headquarters. The focus of this report is the process that led to the changes in the YTRs and the consequences that followed. Among the factors influencing changes to the YTRs were the following:

- Increasing demands from the Yukon Government, conservationists, the business community, and the general public for an increase in the stumpage fee to more acceptable levels.
- Increasing demand for Commercial Timber Permits (CTPs) by the Yukon forest industry and higher prices for fiber.
- Identification by DIAND of the stumpage fee as a potential contribution to departmental revenues.

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OBJECTIVES OF THE DECISION-MAKING PROCESS

The immediate objectives of the decision-making process were:

- To amend the Yukon Timber Regulations, to include higher stumpage fees, to introduce a reforestation fund provision and tenure, and in this way bring the regulations in line with adjacent jurisdictions.

- To contribute, through the amended fee schedule in the Regulations to the cost recovery initiative brought on by the Program Review exercise.

At a later stage in the process, the revisions to the YTRs were undertaken to promote a value-added and competitive local industry to benefit all Yukoners and to allow them to participate in Yukon harvesting activities. A longer term objective was to contribute, through the reforestation provisions, to the maintenance of the long-term health of the forest ecosystem and to ensure continued sustainability of the Yukon forestry and the Yukon forest industry.

KEY EVENTS IN THE DECISION MAKING PROCESS

The decision-making process is framed by a series of major events. The first was the announcement of a moratorium on the issuing of CTPs for the 1995/96 season until changes could be made in the regulations to allow Yukon stumpage rates to be increased. The next major event was the approval, on July 27, 1995, of the amendments to the Yukon Timber Regulations permitting, along with the charging of a reforestation fee, the stumpage fee increase.

The formal amendment of the regulations was followed by an announcement of a process by which commercial timber permits would be allocated. Mainly as a result of industry objections to the process, a new allocation system was developed which—before it could be implemented through regulatory changes—became the subject of a legal challenge by the Liard First Nation.

Further consultation led to a new draft of the regulations and a series of decisions surrounding the procedures developed for the revised system of allocation of CTPs that resulted from the second round of regulatory amendments.

REVIEW FINDINGS

The review of the events, decisions, actions of DIAND relating to the Yukon forest industry in 1995 has yielded the following major findings:

- Some features of the process and its results are positive, but the negatives are substantial.

- The positive immediate outcomes are: stumpage fees were put in place that provide a fairer return on a public resource; the principle of a reforestation fee was established; and, as a result of the experience, the Department has recognized an urgent need to re-establish forestry expertise in the Yukon.

- What was originally a relatively simple regulatory process was made too complex.

- The initial communication of the moratorium in the Region set the clock for subsequent steps in the process and compromised the ability of the Department to deliver thereafter. For nearly five months, insufficient effort was made to correct the early impression of the process being a relatively brief one. Thus, unrealistic expectations were created and then not adequately managed.

- The timing problems related in part to a concern more for revenue generation than with the sustainable development of forestry. This is reflected in the fact that there was too little forestry input throughout the process and inattention early on to the allocation issue.

- Later inattention to the operational implications of policy decisions delayed the implementation of the regulations.

- Lower volumes of wood were cut in the 1995/96 season by Yukon forest operators, including the carryover, compared to 1994/95—about 50% lower.

The unintended impacts of the decision-making process were largely negative:

- Public confidence in DIAND's ability to manage the forestry resource was damaged.

- Relations with some Yukon First Nations were strained over what they regard as inadequate consultation with Renewable Resource Councils or objections to the Department's unwillingness to maintain the moratorium.

- Most significant was the unemployment and related impacts on the community, particularly in Watson Lake. Unemployment, loss of income, or loss of equipment to creditors are among the negative community impacts resulting from the low level of logging activity in the Yukon in the 1995/96 season.

RECOMMENDATIONS

Following the terms of reference for the review, the report makes several recommendations and suggestions for improvements that are provided in section 5. This review has identified a need for timber regulations in the Yukon to be placed within a broader framework of forest management policies.

It is our recommendation that in the short and longer term, the Department build on the solid respect in the industry and in the community for the newly appointed forestry officials with knowledge of operational realities by giving them a more active role.

It is our further recommendation that the Department consider the following suggestions:

- In the short term, address any remaining uncertainties with the existing regulations and prepare a procedures manual that deals with all areas of interpretation of eligibility under the regulations.

- Try to find something better than a first come-first served method or the unpredictability of the draw. We suggest another serious look at the feasibility of tendered sales of CTPs.

- Finally, if the draw method is retained, a solution must be found to the "privacy" concern that inhibits needed cooperation among successful CTP applicants.

SECTION 1 - INTRODUCTION

PURPOSE OF THE REPORT

The purpose of this report is to present a review of the events, decisions, actions and effects of decisions relating to the Yukon forest industry in 1995. It presents the review issues, the methods used in the review, background information, detailed information on the process, findings and associated recommendations.

PURPOSE OF THE REVIEW

This review responds to a commitment by the ADM Northern Affairs to review the decision-making process and the effectiveness of decisions.

Exhibit 1 sets out the issues to be addressed in the review as they appear in the Terms of Reference and as approved by the Departmental Audit and Evaluation Committee (DAEC) on February 18, 1996.

Exhibit 1 Review Issues

What is the context in which the decision-making process took place (e.g.: what were the rationale and objectives for declaring a moratorium and what factors influenced the process?)

How and when were the principal decisions taken and communicated in relation to stumpage, reforestation, tenure, the moratorium, system of allocation and regulatory change?

What were the process and associated activities for revising the Yukon Timber Regulations? (e.g.: How were decisions made, what analysis was undertaken and how were the policy options arrived at?)

How effective and efficient was the decision-making process (e.g.: objectives achievement, timeliness)?

What were the strengths and weaknesses of the process?

What corrective actions need to be taken to ensure that permits are issued in a timely manner and that the Yukon's Forest Resources are managed in a way which promotes sustainable development?

REVIEW APPROACH

This review has been undertaken by the Departmental Audit and Evaluation Branch (DAEB) with the use of a consultant. Interviews have included key participants in the process, both internal and external to the Department. Among those interviewed outside DIAND were representatives of the Yukon Forest Industry, participating and non-participating First Nations, community stakeholders and forestry experts. File reviews were undertaken at DIAND headquarters and at the Yukon Regional Office.

Interview protocols were developed to address the review issues appropriate to the particular type of key informants. The vast majority of interviews were conducted as in-person interviews with a single respondent. Some were conducted with multiple sources and a few were done by telephone.

Input from the mill owners and loggers in the Watson Lake area was obtained in two meetings at which interested individuals joined the Executive of the South East Yukon Forest Management Association to discuss the review issues. In addition, the consultant visited both a site being cut under a Commercial Timber Permit (CTP) and a log sorting area and conducted a small number of personal interviews with representatives of the Watson Lake forestry industry. Exhibit 2 shows the number of persons interviewed by type of organization.

Exhibit 2 Number of Persons Interviewed, by Type of Organization

Department of Indian and Northern Affairs	
Headquarters	3
Yukon Regional Office	9
Yukon Territorial Government	3
First Nations Stakeholders	8
Forest Industry	15
Other Parties	9
Yukon Forest Coalition	
Whitehorse Chamber of Commerce	
Yukon Conservation Society	
Watson Lake Chamber of Commerce	
Whitehorse Municipal Council	
Watson Lake Municipal Council	
Forestry Experts	2

SECTION 2 - BACKGROUND

OVERVIEW OF DIAND FORESTRY PROGRAM

The Minister of Indian Affairs and Northern Development is charged with the effective management and administration of all territorial lands under his control. Historically, the fire protection component of the Forestry Program was far more significant in terms of resources and activities than the administration of timber regulations affecting the Yukon forest industry.

Forestry operations on Crown lands in the Yukon Territory are carried out under the Territorial Lands Act (TLA) and Regulations. Yukon Timber Regulations (YTR), originally promulgated in 1962 and amended through 1994 in minor respects, governed the cutting and removal of timber on territorial lands until 1995.

In other jurisdictions in Canada and the United States public forest management policies have emphasized forest renewal and silviculture practices. In British Columbia, for example, since 1987 detailed silviculture regulations have required major forest tenure holders to reforest their logged areas at their own cost. In BC and in other Canadian jurisdictions governments have taken measures to obtain a significant return to the public from the sale of standing timber and have imposed stumpage fees that by 1994 had reached approximately $30 a cubic metre ($m^3$)[1].

In contrast, in the Yukon Territory in 1994 holders of Commercial Timber Permits (CTPs) were subject to no reforestation requirements or levy in lieu and paid stumpage fees on sawlogs of 20cents/m^3. This rate, which was out of line with practices elsewhere, had not been changed since 1962.

Although no comprehensive inventory or forestry management plan existed for other areas of the Yukon, DIAND did complete a timber inventory for the South East Yukon (areas YO1, YO2, and YO3) in the late 1980s. This formed the basis for a Forest Management Plan for the Watson Lake Area that was completed in 1991. However, the plan was not formally implemented, although DIAND staff responsible for forest management used the allowable cut for the area as a guide in granting commercial permits to log timber.

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[1] In Alberta, the stumpage fee was approximately $20/$m^3$; in the NWT approximately $8/$m^3$. The provincial governments use portions of the fees collected to build infrastructure such as access roads, bridges, etc. Transportation allowances and distance are also factors that are considered in the provincial fees. In the Yukon Territory, the operator is responsible for access roads, winter roads, etc. and no transportation allowance is included.

THE TIMBER REGULATIONS AND PROCEDURES--1962 TO 1995

The focus of this review is on the process of decision-making surrounding the revision of the regulations governing the issuing of Commercial Timber Permits. Permits were issued under Section 17 and 18 of the Territorial Lands Act and Sections 4 and 5 of the Regulations.

Sections 17 and 18(a) of the Act provided :

> 17. No person shall cut timber on territorial lands unless that person is the holder of a permit.
>
> 18.(1) The Governor in Council may make regulations
>
> (a) Respecting the issue of permits to cut timber and prescribing the terms and conditions thereof, including the payment of ground rent, and exempting any person or class of persons from the provisions of section 17.

Under the Yukon Timber Regulations the only terms and conditions prescribed were that an applicant for a permit must be 18 years of age. With respect to the issuing of permits, Sections 4 and 5 of the regulations provided that:

> 4. The Minister may issue a permit to any individual who is eighteen years of age or over or to any corporation for the cutting and removal of timber from territorial lands.
>
> 5.(1) Subject to these Regulations, a forest officer may issue to any individual who is eighteen years of age or over or to any corporation a permit for the cutting and removal from territorial lands of timber in an estimated annual volume which does not exceed 2.5 million board feet measure per annum.

The Regulations do not state how the permits are to be allocated except to indicate that there was an element of discretion in the hands of the forestry officer and that applicants had to be either a corporation or persons who have reached the age of eighteen. In practice, first come first served was the method of allocation.

The process of obtaining a CTP prior to December 1995 was as follows:

- Usually, in August or September a forest operator selected an area about to be logged based on knowledge of the situation.
- The operator prepared an Annual Operating Plan (AOP) and prepared a cut block layout or layouts to an estimated maximum of 15,000m^3.
- The operator submitted the AOP to the Resource Management Office (RMO).

- The Regional Manager accepted or rejected the AOP, and if accepted, the plan went to the Land Use Permits applications process which consisted of a LUAC referral process and an environmental review process.

- At the end of this process, assuming a positive recommendation, both the Land Use and CTPs were finalized and awarded.

It is our understanding that the process typically took about 21 days but could take up to a maximum of 42 days from submission of the AOP. Normally, this stage would be preceded by an assessment under the Timber Management Guidelines (TMG) to ensure that the AOP adheres to acceptable environmental mitigation standards.

Normally, each CTP was issued for a one-year period. However, for the 1994-95 season—in anticipation of the Forestry Transfer to YTG—CTPs were issued to March 31, 1995.

TIMBER PRODUCTION IN THE YUKON TO 1995

Volumes of fibre logged in the Yukon under CTPs were never large until 1994/95. Timber production is reported in the Yukon on an overlapping year basis to reflect the fact that logging was traditionally done after freeze up—roughly from October to the end of March. In 1993/94 only 206 CTPs were issued in total in the Yukon, and the volume of sawlogs permitted to be harvested under these commercial permits was only 110,940 m^3 in the entire territory.

The South East Yukon, the Watson Lake area, had in recent years generated the largest volumes. The importance of the Watson Lake forestry is shown in the following table, which indicates that in 1993/94 the timber volume for Watson Lake was 80,563 m^3. This represented 73% of the total production of the Yukon in that year. In that same year, 22 CTPs were issued to operators for the Watson Lake area.

Logging Year	Timber volumes within permitted CTPs[2] (m^3)	Sawlogs
1989/90	30,342	
1990/91	30.742	
1991/92	35,065	
1992/93	20,790	
1993/94	80,563	78,614
1994/95	329,099	327,086

Source: for 1989/90 and 1992/93 Discussion Paper, p.12; 1993/94 and 1994/95 Departmental Records

There had actually been other significant logging activity in the Watson Lake area since 1979. In that year a company was awarded a 10 year, renewable licence to cut 1.5 million cubic metres from a 754 square kilometre area, under a Timber Harvesting Agreement (THA). The THA had higher stumpage fees than for CTPs and imposed requirements for reforestation.

THE POLICY ENVIRONMENT

The responsibility for forest resources was transferred to the GNWT in 1987, and the transfer of responsibility for forestry in the Yukon was the subject of intense negotiation starting in 1993.

The expectation that responsibility for forest management would devolve to the Yukon Territorial Government, meant that few resources had been directed by DIAND towards forest management other than the fire protection program. Moreover, in anticipation of devolution, all of DIAND's professional foresters in the Yukon had left the program by early 1995 and had not yet been replaced.

In the Yukon, the Director of Renewable Resources took a "hands on" approach to the forestry file and did not assign the day-to-day responsibility to others in his group. At Headquarters, forestry expertise was available to Natural Resources policy makers on a seconded basis. Policy responsibility for initiating a change in the Timber Regulations and for the decisions related to that process rested with the most senior staff of the Yukon Regional Office and with three senior departmental staff at Headquarters.

[2] This term refers to the amount of timber which the permit allows to be cut; it is not a record of the actual volume cut, since there are, in fact, no records of this volume in the Yukon.

FACTORS INFLUENCING THE DECISION TO CHANGE THE CTP REGULATIONS

In 1994, DIAND officials began to seriously consider amending the Timber Regulations to increase the stumpage fees. Among the factors influencing this action were the following:

- Increasing demands from the Yukon Government, conservationists, the business community, and the general public for an increase in the stumpage fee to more acceptable levels. The pressure came from the effect which the recent world and North American demand for lumber was beginning to have on prices for Yukon lumber.

- Increasing demand for CTPs by the Yukon forest industry. By the Spring of 1994, forestry staff were aware that "significant demand" for wood was already evident in the Watson Lake area.
- As the year progressed, requests for CTPs rose to a level higher than in 1993/94. In the Yukon as a whole, for the full logging year of 1994/95 the number of CTPs rose from 206 to 218 and the volume permitted rose from 110,940 m^3 (sawlogs) to 389,098 m^3 (sawlogs). In Watson Lake permits increased from 22 to 43 and volumes permitted rose from 78,614 m^3 (sawlogs) to 327,086 m^3 (sawlogs).

- The increasing demand raised timber prices in the Yukon far higher than historical levels, which in turn made possible stumpage fees under THAs at very high levels. The stumpage fee instituted through a bidding process in the LaBiche River area in 1994 varied from $60.50 per m^3 to $66.50 for green timber, plus a requirement to reforest.

- Identification by DIAND of the stumpage fee as a potential contribution to departmental revenues for the Yukon Region sufficient to cover reforestation, administration costs, and a resource rent.

- Identification of the need for a reforestation fee that would be applied directly to reforestation and would not be considered government revenue.

The remainder of this report is concerned with the process that led to the changes in the YTRs and the consequences that followed from the process.

SECTION 3 - DECISION-MAKING PROCESS

OBJECTIVES

The decision-making process did not begin with a single set of objectives which then governed the rest of the process. It evolved, starting with a set of shorter term objectives that later included longer term goals.

The immediate objectives of the process were:

- To amend the Yukon Timber Regulations, to include higher stumpage fees, to introduce a reforestation fund provision and tenure, and in this way bring the regulations in line with adjacent jurisdictions.

- To contribute, through the amended fee schedule in the Regulations to the cost recovery initiative brought on by the Program Review exercise.[3]

At a later stage in the process, the revisions to the YTRs were undertaken to promote a value-added and competitive and local industry to benefit all Yukoners. An objective of this stage of the process was to devise a system of allocation of CTPs that would provide Yukoners, in particular, but also other Canadians with an opportunity to participate in Yukon harvesting activities.

A longer term objective was to contribute, through the reforestation provisions, to the maintenance of the long-term health of the forest ecosystem and to ensure continued sustainability of the Yukon forestry and the maintenance of a Yukon forest industry.

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[3] As stated in the Treasury Board Submissions of July and December, 1995, the initial amendment to the Yukon Timber Regulations (YTRs) were to modernize the stumpage fee structure and bring it into line with adjacent jurisdictions and provide for reforestation to maintain and enhance the long-term health of the forest ecosystem, while providing environmental, economic, social and cultural opportunities for the benefit of present and future generations. The second set of revisions were to provide Yukoners and other Canadians with an opportunity to participate in harvesting activities and ensure the continued sustainability of the Yukon forestry and the development of the Yukon forest industry.

OVERVIEW

Exhibit 3 provides an overview of the DIAND Yukon Forestry decision-making process. The process that is described is framed by a series of major events.

The first was the announcement of a moratorium on the issuing of CTPs for the 1995/96 season until changes could be made in the regulations to allow Yukon stumpage rates to be increased. The next major event was the approval, on July 27, 1995, of the amendments to the Yukon Timber Regulations permitting, along with the charging of a reforestation fee, the stumpage fee increase.

The formal amendment of the regulations was followed by an announcement of a process by which commercial timber permits would be allocated. Mainly as a result of industry objections to the process, a new allocation system was developed which—before it could be implemented through regulatory changes—became the subject of a legal challenge by the Liard First Nation.

Further consultation led to a new draft of the regulations, decision-making process ends with a discussion of decisions surrounding the procedures developed for the revised system of allocation of CTPs resulting from the second round of regulatory amendments.

Exhibit 3 Overview of the Decision-Making Process

• Decision to Explore Changing Regulations	October 1994
• The Moratorium on CTP Applications	February 17, 1995
• The Consultation Process	April 26 - May
• Preparing the Regulatory Changes	May - July
• Announcement of the 1995/96 Carry-Over Decision	June 9
• Announcement of the Interim Yukon Forest Policy and new regulations	August 4
• Announcement of CTP Allocation Procedures	August 22
• Implementation of Allocation Procedures	August 22 - September 13
• Development of a New Allocation System	September 14 - October 22
• The Liard First Nation's Intervention	October 25 - November 22
• Revising the Regulations a Second Time	October 25 - December 7
• Implementation of the New Timber Regulationsand Permit Issuance	October 1995 and ongoing
• Approval of the Amendment of the Regulations by Privy Council Office	December 7, 1995

DECISION TO EXPLORE CHANGING REGULATIONS

The government's intention to raise revenue by levying a higher stumpage fee was signaled in the Spring 1995 budget, which indicated that rates would be increased from the existing 20 cents/ m^3 to a rate more in line with what provinces were charging for the use of a public resource.

Before that announcement, senior management in the Region had considered a range of options for stumpage fee increases that included differentiating spruce and pine and favoring local operators with lower rates. A timetable developed at Headquarters in late January targetted approval of the Order-in-Council that would give effect to the change for early April, before the Forestry Transfer with YTG (then thought to be on May 15, 1995) would take place.

In early February, Headquarters and the Region had not decided on the changes to the Timber Regulations they proposed to make, and some staff were of two minds about proceeding with the regulations as long as devolution was on the table. In addition, there was talk of a reforestation component to the regulations by this time, although this was thought for a time to require a change to the Act as well as the regulations. Yukon Region had begun to recognize, as well, that the amendment process would likely take longer and thought that a 60 day delay in the issuance of the 1995/96 CTPs was likely to be required, as they did not think the regulatory changes could be put in place before March 31, 1995.

On February 15, following the collapse of Forestry Transfer talks, Headquarters and the Region assessed short-term strategy options that included:

- Increasing the stumpage fee with provisions for reforestation.
- Declaring a moratorium on forestry to provide time to change the policy and the regulations.
- Accepting CTP applications but including a retroactive clause in the permit.
- Announcing a community consultation process.

Decision-makers also considered longer-term issues of developing reforestation provisions within a fee schedule and establishing the human resource requirements for effective management of the forest program.

The decision-makers at HQ and in the Region agreed, after risk-analysis of the options, that the preferred approach was to establish a $10/$m^3$ stumpage fee with a requirement for forest operators to register a reforestation plan and post a security deposit. It was believed that this approach could establish a timber harvesting regime for the summer of 1995 that would achieve the two objectives of increasing stumpage fees and establishing reforestation as a standard practice.

THE MORATORIUM ON CTP APPLICATIONS

The evidently rational process of option identification of mid-February was soon disrupted by poorly communicated actions taken in the Yukon.

On February 17—without any apparent consultation with HQ on the timing—Yukon Region informed Watson Lake loggers that no further applications for CTPs would be accepted until the new stumpage regulations were in place.[4] Subsequent information from the Region conveyed to the logging industry in a meeting in Watson Lake indicated that it was hoped that decisions would be finalized by the end of April—mid-May at the latest—and that a consultation process would seek input from the public and the industry on appropriate regulatory changes.

Outside the Watson Lake area, some Resource Management staff did not appear to think that the moratorium applied to their Districts. Although a public statement was made on February 17 announcing that DIAND had decided to await a review of its forestry policy before issuing any further permits for the next fiscal year, internal communications on this subject came at the end of the month. On February 28, 1995, Districts were informed by memo from the Acting Regional Forestry Manager that District Staff were directed "...to advise clients that applications for CTPs for green sawlogs will not be accepted until decisions are made on [forestry policy]. For sawlog applications for the 1995/96 harvest that may have been already accepted, but have not been screened/issued, District Offices shall advise applicants that permits will not be issued until new stumpage rates have been established." The implication is that some 1995/96 applications had already been issued.

The decision on not accepting further CTP applications soon became known as the moratorium, although departmental officials did not use this term at the outset. It came into effect as a means of allowing time for the planned new stumpage fees to be put in place, so that any harvesting thereafter would be subject to the higher fee. Senior Management at HQ, who were quick to see the scheduling pressure that the "April/May" assurance had created, sought to fix attention on timing and the critical path to ensure amendment of the regulations at the earliest possible date. Meanwhile, logging under CTPs issued before the moratorium continued until March 31, the date when the permit ended. Some operators had allowable cut levels that were not fully utilized when the logging season ended at the end of March.

THE CONSULTATION PROCESS

DIAND was committed to a public consultation process before it had in place a discussion paper to stimulate input to its agenda. A consultant was engaged to assist DIAND to develop a consultation document. Throughout March and to mid April the drafting proceeded with virtually no input from the communications group in Yukon and input from field operations only in Watson Lake.

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[4] The main demand for CTPs was in Watson Lake, where more than 200 applications had been received for the 1994/95 season, compared to the 43 permits that were issued.

On April 26, the department released the discussion paper outlining options, but leaving its own preferences unstated. Copies were sent to industry groups, conservation groups, the Council for Yukon First Nations, Yukon First Nations, as well as the Renewable Resource Councils, and to the Yukon Territorial Government YTG—which took umbrage at being treated like any other stakeholder.

Community consultations—facilitated by a former YTG Deputy Minister—took place in Haines Junction, Dawson City, Whitehorse and Watson Lake between May 8 and 11, 1995. Public attendance totalled 140, with the majority of participants being forest operators. Meetings were attended by representatives of the YTG's Departments of Renewable Resources and Economic Development, the Yukon Conservation Society, Yukon Forest Coalition, Canada Parks and Wilderness Society, Kaska Forest Resources, the Selkirk First Nation, and local media. Private consultations with some non-attending First Nations and some forestry stakeholders were held. The Council of Yukon First Nations did not participate.

In the public meetings forest operators said they wanted to be allowed to return to work—to complete the harvest of approved but unharvested timber from CTPs issued for 1994/95. They also said they wanted stumpage rates to be tied to market prices and local costs. Some opposed an open competitive bid option whether or not logs were processed in the Yukon because of fear that small operators would be unable to compete against larger operators. Concern was also expressed at the meetings over how DIAND would be able to restrict access of out-of-territory Canadians to a federal resource.[5]

The Region concluded from the consultative process that there was agreement on the need to change existing policies:

- Support for a two-tier system of stumpage was observed, providing there was a reduced rate for timber processed in the Yukon.
- Reforestation was seen as more than replanting and was a necessity to manage the resource.
- Longer forest tenures were deemed a necessity to help operators secure financing.
- Residency was an essential principle in the allocations of permits.
- Longer term issues of sustainable forestry management were considered important.

The Region took this information into account as it developed the new forestry policy.

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[5] *Forestry Discussion Paper Consultations*, p.3.

PREPARING THE REGULATORY CHANGES

The file reviews and interviews support a description of the process stretching from the public consultation that took place in early May to August 4, when the new CTP regulations were announced, that was largely played out at two distinct levels:

- HQ took on the responsibility for obtaining approval of the amendment to the regulations and developed contingency plans for achieving that objective by late July.

- Regional Office took responsibility for developing the substance of the regulatory changes and dealing with substantial pressures from the Watson Lake forest operators, in particular, for remedial action.

Pressures from the forest industry in Watson Lake were unabated over the month of May and into June:

- The South East Yukon Forest Management Association (SEYFMA) submitted a proposal to DIAND on May 17, 1995, calling for relief from "some serious economic hardships from many people throughout the Yukon who depend on forestry road construction, logging, trucking, and sawmilling for a living." SEYFMA challenged the legality of a moratorium on existing permits (i.e. those issued before March 31, 1995) on grounds that CTPs are issued for one year "unless otherwise stated."[6]

- Although SEYFMA had offered as recently as March 3, 1995, to pay \$7/m^3 and \$3/m^3 for stumpage and silviculture (on the assumption local mills could ship out a portion of their logs to the open market), by May 17, SEYFMA was arguing that dropping timber prices made a total of \$4.75/m^3 for both stumpage and reforestation the limit that should be charged.

- By this time the industry said it had "been given to understand that it will take 6 to 9 months (more likely a year) before new forest policy is enacted by federal legislation", and increased the pressure to obtain what was soon to be termed the "carryover" decision: a lifting of the moratorium to allow harvesting under previously approved CTPs.

- On May 24, SEYFMA met with Yukon Regional officials to explain their concerns.

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[6] As noted earlier, in anticipation of the Forestry Transfer to YTG, CTPs in 1994/95 were issued only until the end of March. This would appear to satisfy the "otherwise stated" provision. Whether the condition was well communicated throughout the Territory is not clear.

- By the end of May Yukon forestry operators were threatening to set up roadblocks to protest against the moratorium.

On June 9, Yukon Region announced the "carryover" decision, to allow operators to use their previously approved but unharvested 1994-95 CTPs over the summer and fall until December 30, 1995.[7] Development of the details of the arrangement, conducted by both HQ and the Regional Office, temporarily sidetracked work on the regulatory change process. However, the provisions were seen as a way of creating forestry activity in the Yukon (up to 80,000 m^3 in Watson Lake; and up to 25,000 m^3 in the rest of the Yukon) until a new regulatory requirement was in place and permits could be issued.

Despite the need to develop the carryover policy, by early June a policy with respect to regulatory changes was firming up internally. The Region had a fairly clear view now of what the regulatory changes would be:

- stumpage fee of \$8/m^3 for wood processed in the Yukon; \$18/m^3 for export volumes in 1995/96. Provision for responsiveness to changes in market conditions.
- A reforestation ("forest renewal levy") but not yet settled on the amount.
- Tenure increased from one to two years by adding a clause for one year renewal, dependent on performance.

However, the Region still had to deal with a discontented forestry industry. The carryover provisions were barely announced when the SEYFMA put forward an argument for compensation. On June 11, SEYFMA made a presentation to DIAND senior management in which they requested compensation for those operators facing "financial hardship or possible bankruptcy" as a direct result of the moratorium, and "evergreening" (a word coined by SEYFMA to suggest grandfathering or exclusion from new provisions, for a specific group) of all permit holders (not just those with un-cut volumes under the 1994/95 CTPs). They wanted to be able to apply for a minimum of 5,000 m^3 with an expiry date of at least six months from date of issue.

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[7] In the later discussion of the impact of this decision we refer to this as the "1995/96 carryover harvest," following the terminology used in the Region.

On June 16, Renewable Resources (YTG) offered written support in principle for the revision of forestry policies, provided the new federal policies were on an interim basis only and were consistent with the Umbrella Final Agreement and First Nations Final Agreements. With respect to tenure, YTG first asked that CTP tenures remain at one year (except where local mill operators could "show an operational need up to five years."). On June 28, YTG said that CTP tenures should be for five years.[8]

On July 4, the ADM Northern Affairs Program rejected SEYFMA's request for special permits for those not benefiting from the carryover provisions. In the same letter he assured that timber would be available and accessible "this winter under the amended regulations."

On July 26 the Teslin Renewable Resources Council requested an extension of the moratorium for the Teslin area for commercial loggers and for an increase in stumpage fees to be comparable to those in southern markets.[9]

Meanwhile, against this background of events, the refinement of the details of the regulations continued within DIAND, on a timetable that had been identified months earlier as the quickest that could be expected for a regulatory amendment. Central agencies were briefed on the main lines of the changes, and on July 27 the Order-in-Council made two changes to the schedule attached to the Regulations. One change was the stumpage fee; the other was the addition of the reforestation charge.[10]

ANNOUNCING THE INTERIM YUKON FOREST POLICY

On August 4, DIAND announced the details of the regulatory changes in what was termed the Interim Yukon Forest Policy--a statement which included an intention to establish a Yukon Forestry Advisory Committee. Neither the regulations nor the announcement specified the definition of local operators. DIAND indicated that it would clarify this issue later in August prior to accepting applications.

The key areas of the Interim Policy involved the setting of stumpage fees of \$5 m^3 and \$10 m^3; the establishment of a reforestation fee of \$5 m^3; creating a mechanism (tiering) for distinguishing stumpage fees for export and for domestic processing; forest tenure of two years; and the establishment of a CTP timber harvest limit of 450,000 m^3 for the 1995/96 season. Details of the policy are provided in Annex A.

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[8] YTG expressed support for an option: "such lesser time as may be agreed upon...renewable annually if all the conditions are met."

[9] In mid August the Region responded to reject the extension of the moratorium in the Teslin area.

[10] The tenure issue was not part of the Regulations, as the existing Regulations allowed for the issuance of longer terms for CTPs.

Initial reaction to the Interim Policy was mixed. The Yukon Conservation Society reacted through its Executive Director to say that the proposed reforestation fee was too low. On the other hand, a Director of the SEYFMA was quoted as saying that the "feds did a good job for a change." He indicated that, despite the increased costs for loggers, there should still be room for profit.

The President of the SEYFMA, however, reacted on behalf of the Directors of the Association much more negatively asking, on August 9:

- That the entire harvest allotment for the Watson Lake area be made available to local operators, and then to outside interests.
- That the 15,000 m^3 timber permit limit be raised for local mill owners.
- That permit allocation procedures have stringent Yukon residency requirements.

The Regional Office, which was in the midst of an effort to develop the promised application and allocation procedures, did not respond directly to the allocation issues raised by SEYFMA. On August 16, the Region rejected the request for a panel and suggested that any concerns about a "level playing field" (a complaint about unequal treatment of applications at or around the time of the moratorium in Watson Lake) be addressed to Forestry officers.

ANNOUNCEMENT OF CTP ALLOCATION PROCEDURES

Planning Considerations

DIAND now needed to announce how and to whom CTPs would be issued. In the first three weeks of August, Regional officials prepared draft allocation procedures. They consulted with Headquarters, which reviewed a draft prepared by Yukon Region on August 20 and offered advice. The regional decision-makers had a number of specific objectives:

- They wanted to protect local industry by establishing Yukon residency requirements, but Headquarters saw this to be a problem as the regulations contained only an age requirement (18 years for an individual) or mentioned "a corporation."
- The Region wanted to provide a direct allocation to the existing lumber mills and have a lottery for the remaining volumes. The direct allocation approach was not mentioned directly in the Interim Policy announcement which had referred to CTPs going to "local wood operators." Most importantly, the implication in the policy statement had been that the volumes for CTPs would range from 500 to 15,000 m^3. In the allocation procedures the Region wanted to limit CTPs to a maximum of 7,500 m^3 in Watson Lake and up to 5,000 m^3 in the rest of the Yukon.

- The Region had debated the virtues of the existing "first come-first served" method of allocation of CTPs as opposed to some bidding approach. A lottery system appeared to officials to be the best method consistent with the existing regulations for allocating CTPs in a situation of substantial pent up demand, as it was administratively simple and would avoid the "stampede" that it was feared "first come-first-served" would create.

The Announcement of the Procedures

On August 22, the Yukon Regional Office announced the principles to govern allocation of CTPs and informed the public how to submit an application for a permit. The Region indicated that its procedures followed the following principles pertaining to the allocation of forest resources: fairness and equitability; supportive of local processing; operationally feasible/administratively simple.

These principles were captured in the following features of the procedures:

- Inclusion of a Yukon residency requirement among the eligibility requirements.
- Direct allocation of permits to existing mill owners.
- A lottery method of selection from among eligible applications for CTPs.

The detail of the announcement set out criteria for eligibility, depending on both the district (Watson Lake vs the Greater Yukon), and by tier (whether the wood was for export or local processing). In addition:

- The announcement of the procedures introduced a new condition in the allocation in the Watson Lake area. It was indicated that the area of harvest would be preselected watersheds and applicants would be issued polygons generated by DIAND. The announcement indicated that commencing October 1, 1995, the first polygons would be available and the others would follow in the following weeks.
- Applicants were told that they would have one week to field examine their selected polygon and confirm acceptance. If not accepted, the applicant would be placed at the bottom of the eligibility list.

A negative reaction to the procedures was not long in coming. The SEYFMA sent a fax letter to the Region on September 1, indicating:

The lottery system for allocation of timber was "unacceptable":

- The $15 fee for stumpage and reforestation on tier two permits rendered the logging charge uneconomical.

- The volume allocation of 75,000 m^3 for mill owners was insufficient to sustain the industry.

- "Under the previous forest policy, local loggers could apply for and access their own timber quota and make their own decisions regarding their risk and their costs for road building, logging, trucking, seasons of operation, markets, etc. Now their business plans had been sabotaged by a lottery system. As forest operators, we requested a tenure system for improved financing opportunities in order to develop infrastructure. Instead, we now get to risk our substantial investments against any Canadian who wishes to apply for a permit, even though they do not derive their livelihood from the forest industry, or have any past experience with forest operations."

- Finally they objected to the timber allocation through polygons: "The inventory maps ... are not accurate enough for operational planning for three or four small cut boxes per permit."

The outline of the industry position which followed on September 15 reiterated the concerns in even stronger language, which the Association conveyed, as well, directly to the Minister.[11]

Implementation of the Allocation Procedures

As set out in the new allocation procedures, September 8 was the last day for acceptance of CTP applications. Applicants could apply for both tier one and tier two allocations but were required to indicate a preferred tier and preferred District. The complex process involved District Offices accepting "Intent to apply" forms for other Districts and faxing the forms to the appropriate district.

As the Region assembled information on the number of CTP applications, it became clear that the numbers were very high: by September 11, information available to the Regional Office indicated that 800 applications had been received for CTPs in Watson Lake, no fewer than 551 for the more lucrative tier 2 timber.

The draw for CTPs had been scheduled for September 13 in Whitehorse and September 14 for Watson Lake. However, strong and increasingly critical public and industry concerns over what was considered to be the inherent unfairness of the lottery procedure were expressed.

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[11] While the forest industry was complaining about the allocation process, management in the Yukon Regional Office faced a difficult situation from another quarter: the Teslin Tlingit Council with whom the Regional Office had been discussing the Interim Policy for more than a month, reiterated in very strong terms its dissatisfaction with many aspects of the forest policy. It criticized the Department for its lack of response to its positions and claimed that the Government of Canada and its representatives were not honouring their obligations as outlined in the Teslin Tlingit Council Final Agreement under Chapter 17.5.3.

Industry's position was that its members could not accept the risk imposed by a lottery of not obtaining a CTP. (Stories about accountants, funeral home directors, secretaries, and an assortment of "suitcase loggers" from the south who submitted CTP applications were everywhere to be heard.) The criticism of DIAND centered on the view that the process was giving permits to people who the Region knew would never cut timber.

On September 13 the Minister's office intervened with a decision that the lotteries in Watson Lake and Whitehorse should be postponed.

DEVELOPMENT OF A NEW ALLOCATION SYSTEM

Establishing the Principles

The Department immediately decided that input on the allocation process would be solicited from the forest industry, First Nations, and the Government of Yukon, during the week of September 18. As the advisory committee announced in the Interim Policy had not yet been established, the Yukon Regional Office quickly organized a meeting for September 19 and 20 attended by participants from the following: DIAND, YTG, SEYFMA, Kaska Tribal Council; Liard First Nation; Tlingit Tribal Council, Yukon Chamber of Commerce, and a mill operator.

The objective of the meetings was to provide DIAND with recommendations on a fair and practicable allocation process for commercial timber permits for sawlogs for harvest in the Yukon. The participants were to seek a solution for an allocation process that would provide fairness and equitability; be supportive of local processing; and be operationally feasible and administratively simple, the same principles as guided the August procedures. The stumpage fees and reforestation fee incorporated in the Territorial Timber Regulations were to be regarded as givens. Advice was sought on the allocation method and the amount that should be reserved on a priority basis for different segments of the Yukon Forest sector. Consideration of whether tier one and tier two allocations should be "reprofiled" was also on the table.

A summary of the consultation process, which was distributed to all participants, identified a number of principles proposed by the participants, among which the following are the most important:

- Recognition of the importance of existing long-term and recent Yukon Forest operators with significant investments in Yukon Forestry.

- Provision, nevertheless, for access for new entrants in investments from Yukon and non-Yukon residents.

- An opportunity to promote Liard First Nation access to Yukon Forest Resource and industry development. This was amplified in the discussion of the recommendations with respect to selection criteria for tier two, later in the summary of the meeting, as follows: "Approximately 75,000m^3 is allocated to the Liard First Nation for community benefit. Individual FN members would also be eligible under other categories."

Participants endorsed the concept that under a tier one permit, a maximum of 25% of the volume harvested could be exported unprocessed. The participants also proposed a four level selection process for tier one and a three level selection process for tier two.

The selection criteria defining the eligibility requirements--being the result of a compromise of conflicting interests--were extremely complex. The energies of both the Yukon Regional Office and Headquarters would become absorbed virtually to the end of the year in trying to work through the details and to incorporate the necessary principles into regulatory changes and administrative procedures in the Yukon.

Devising a New Set of Allocation Procedures

The process of devising new allocation procedures to respond to the contradictory policy issues facing DIAND proved anything but simple and straightforward. On the one hand, the legally acceptable (non-discriminatory) principle of a lottery method was politically unacceptable. On the other hand, the eligibility provisions which the advisory committee process had produced were believed to be open to Charter challenge. There was also no basis in the Act or regulations for an allocation of 75,000 m^3 to the Liard First Nation under the CTP provisions. It was recognized that reserving a major portion of exportable timber for one First Nation would, at a minimum, open up a demand for equal treatment from other First Nations.

Yukon Region released a "revised allocation method for sawlogs under commercial timber permits in Yukon" on October 2, 1995. The most important features were:

- The procedure directing allocation to mill owners under the previous method was replaced in favor of a preference, and the lottery method—now called a draw method—for certain categories of applicants was retained.

- A concession was made by the forest industry that allowed them up to 40% export in categories A, B, and C of tier one (the industry actually wanted 75% to be exported, but did not gain this objective) and the CTP limit was raised to 15,000 m^3 in the entire Territory.

- The procedures for determining eligibility were loosely defined (for example, demonstrated capacity for timber harvesting was illustrated as being "investment of at least $50,000 in harvesting equipment."

Implementing the New Allocation Procedures

The Yukon Regional Office now had to contact the 1,358 applicants[12] by letter, asking them to verify their eligibility under the appropriate category and tier, to indicate the amount of timber they were eligible for and the area concerned. Applicants were asked to submit their responses within ten working days from the date of the letter. They were told that if they failed to respond within that time "we will assume that you are no longer interested and we will proceed to process your refund."

THE LIARD FIRST NATION'S INTERVENTION

On October 3, the Chief of the Liard First Nation was informed by Yukon Region that DIAND had decided that it is not in a position to provide the LFN with the requested volume of fibre. It indicated its intention to ensure LFN benefits from the allocation through eligibility under tier two category A. The Department also indicated that the LFN would need to identify its intentions regarding the other applications as submitted in August. (Individual members of the Liard First Nation had submitted a substantial number of applications under the August application process.) The Department expressed the belief that successful resolution of the issue had been achieved by responding to the concerns expressed by Yukoners.

The Liard First Nation's actions on October 25, 1995, proved such optimism unwarranted. Through the auspices of their lawyer, the LFN advised the Department that the proposed allocation of CTPs using eligibility criteria was *ultra vires* the Yukon Timber Regulations. Other interests also indicated that they would challenge the proposed allocation, an action that could result in an injunction against cutting timber that winter.

The major impact of the Liard challenge was that the Department now had to address the Charter and other concerns not covered in the permit application procedure announced in October.

REVISING THE REGULATIONS A SECOND TIME

Moving on a Two-Track Process

After weighing the alternatives which included proceeding as planned, or reverting to the lottery method as originally proposed, the Department decided to continue with the process of allocating CTPs using the eligibility criteria proposed in October, but to hold off actual awarding the CTPs until amendments to the Yukon Timber Regulations had been made.

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[12] This was the final count of applicants for all CTPs in the entire Yukon.

In November and December, DIAND initiated a two track process; the first element was to achieve an amendment to the Yukon Timber Regulations by mid-December and to proceed with an application process that would actually be implemented once the Timber Regulations were passed into law. The second element involved reaching accommodation with the Liard First Nation so as to remove the threat of a possibly protracted legal battle which would further delay the process.

On November 10, 1995, the Department announced that it was taking steps to amend the Yukon Timber Regulations. It indicated the eligibility criteria specifying Yukon residency required change because it contravened Section 6 of the Canadian Charter of Rights and Freedoms.

In keeping with the objective of shortening timelines for the issuance of permits, considerable effort was made in late fall to conduct a baseline assessment of polygon areas, in cooperation with YTG, LFN, and the forestry industry.

Allocating CTPs Prior to Amending the Regulations

DIAND indicated that a draw would be held on or prior to November 23, 1995, to establish a priority for awarding CTPs to applicants for timber not directly allocated. The draw would not establish eligibility but would determine the priority of applications among those eligible. Applicants who previously held CTPs and were eligible for direct allocation remained eligible. The draw was managed by the Yukon Regional Office in Whitehorse for the entire Territory, a decision designed to assure everyone of the fairness of the process.

From an administrative perspective the CTP application process took on a further element of complexity at this point. DIAND now decided that individuals who may have requested a refund based on the perception that they were not eligible under the eligibility requirements of the October announcement were now to be put back into the draw process if they so wished. Although the process was very time consuming for staff who had to send the letters out double registered, the Yukon had created a computerized database of the original applicants and this system greatly facilitated this step in the process.

Within days of the public announcement of the change in the process, the forest industry expressed its dissatisfaction with the process:

- On November 14, Yukon forest operators circulated a document demanding, among other things, that CTPs be issued immediately; that stumpage and reforestation fees payable on month end returns and not up front, and demanding full compensation for loss of revenue, equipment, and property. In addition, it asked for the resignation of the persons responsible for "perpetuating the moratorium in violation of the Canadian Charter of Rights and Freedoms."

- On the same day the District Office in Watson Lake was occupied by loggers and on November 16 a protest by loggers occupied the Elijah Smith Building in which the DIAND Regional Office is located.

- On November 19, a meeting was held in Watson Lake between senior members of the Department and the Liard First Nation concerning the direct allocation to the LFN. On November 20, a letter was sent by the ADM Northern Affairs committing to a direct allocation of timber to the Liard First Nation to develop a training program for band members that would be self-funded, based on the revenue generated from the sale of the timber allocation.

- On the 19th and 20th, as well, public meetings were held in Watson Lake and Whitehorse to discuss the changes to the regulations with the logging industry and other interests.

By November 23, letters were sent to applicants who, under the soon-to-be-amended regulations, would receive a direct CTP allocation.

Drafting and Approving the New Regulations

Headquarters arranged for special consideration by the Privy Council Office in light of the Department's urgent wish to have the regulations in place before the end of the year. The actual drafting of the changes to the regulations took place around a set of amendments to Sections 4 and 5 of the Yukon Timber Regulations. The key changes removed the age criterion for eligibility under previous Section 4, defined the basis on which permits would be issued to applicants, referred to 60% of the timber being processed within the Yukon Territory, and provided the circumstances under which the Minister could refuse to issue a permit to an applicant who had contravened the regulations or who was in arrears of any payment.

Sections 4 and 5 of the new regulations read as follows:

4 (1) The Minister may issue permits for the cutting and removal from territorial lands of timber in an estimated volume not exceeding 15,000 m^3 per permit.

(2) To ensure that sustainable forestry practices are maintained, permits, other than permits issued under subsection 7(1), shall be issued in priority to applicants who have
   (a) demonstrated knowledge of environmental protection and conservation measures related to local timber harvesting conditions;
   (b) experience in the forest industry; and
   (c) the demonstrated capacity to harvest the amount of timber applied for.

(3) In determining whether to issue a permit, the Minister shall have regard to whether
   (a) the applicant has contravened these Regulations in respect of any previous permit; and
   (b) the applicant has fulfilled all of the conditions of any previous permit.

(4) A permit shall not be issued to an applicant if the applicant is in arrears of any amount owed pursuant to these Regulations.

5 Permits issued under subsection 4(1) for the harvesting in each year of a total of 300,000 m^3 of timber shall contain a condition that not less than 60 percent of the timber harvested under the permit shall be processed within the Yukon Territory.

In late November the package went to the Privy Council Office for approval. On December 7, 1995 amendments to the regulations were approved by the Privy Council Office.

IMPLEMENTATION OF THE NEW TIMBER REGULATIONS

Numbers of Applicants

In total, the Timber Allocation Office in Whitehorse received 798 applications between October 3 and October 30 from persons who revised their applications from their original request, and a further 203 applications were received between November 2 and November 6 from persons who did not revise their original requests.

On November 23, the Region notified those receiving direct allocations and held a draw for the remaining timber allocations on November 30.

Status of CTP Applications

Even those receiving the direct allocation of a CTP could not begin immediately to log timber. Having a timber permit was, as it always had been, only the first step in a process that requires the operator with the CTP to first develop a plan in principle and submit that to the District Office. If the plan is accepted, then the operator must develop an Annual Operating Plan (AOP) and have the plan subjected to a land use planning review. In addition, the operator must at that point pay the required up front fees.

On November 21, a draft of the steps in the land use review process was developed in the Regional Office to show that for a direct allocation on November 23 (and making optimistic assumptions for various steps along the way) the referral process would be complete with input received and reviewed no sooner than December 22. It was recognized that the plan would work only if the CTP was issued to an operator who was well prepared and had done the necessary planning. Operations staff observed that very many applicants would not likely move as quickly as the model process suggested, as they would have to acquire sales before committing.

For many applicants in tier two (those subject to a draw) the timing of the process was such that they might learn of their confirmation of eligibility for a particular allocation and then be told the number of polygons which they had been assigned. At this point applicants would be told to proceed to obtain a commercial timber permit. They must then complete and submit an AOP and a Land Use Plan for their harvesting area. In at least one case that we know of, an individual could receive verification of an assignment of an operating unit in late 1995 and then be judged to be ineligible in January 1996.

We were unable to obtain precise data at the time of our visit to the Yukon on the number of CTPs issued. The process was, as suggested above, still sorting itself out because determinations had to be made whether individuals whose names were drawn, satisfied the eligibility criteria for the tier and level that they had applied. According to file data for November 30, 47 individuals were identified for direct allocation.

At the time of our visit, we were told that only a handful of CTPs were issued for the 1995/96 season and that no cutting occurred in 1995 under the new regulations. A few CTPs were issued in 1996 and it is our understanding that at least three operators had cut timber under the allocation.

SECTION 4 - REVIEW FINDINGS

In this section the findings of the review are reported under four major categories of analysis: efficiency, effectiveness, communications, and impacts of the process.

EFFICIENCY

Timeliness

From the perspective of timeliness, the analysis yields a mixed conclusion. In terms of the objective of getting regulations in place quickly to reflect Departmental objectives, the process failed. On the other hand, it is evident that the efficiency of the process increased as the process went on. Between mid-September and December 7, the Department moved as quickly as obstacles permitted.

Only the directly allocated CTPs were issued in 1995, but this was not soon enough to allow for the process of AOP approval and environmental impact assessment, even with the significant effort made to compress the normal process. A few operators cut timber up to March 31. Clearly a process that first promised regulations by mid-May (latest) then by winter, cannot be judged to be anything but inefficient.

The initial communication of the moratorium set the clock for subsequent steps in the process and compromised the ability of the Department at the outset to deliver in a timely manner.

The July regulatory changes were actually administratively simple. There is no logical reason why the entire package, including, the allocation procedures could not have been in place by the time the regulations establishing the stumpage and reforestation fees were passed. However, the Department, which regarded allocation as a regional, administrative issue, left it as the last step in the process[13]. The lack of forestry expertise among the policy makers, referred to earlier, likely accounts for the treatment of the allocation issue. (On the second attempt, the determination of an application process was started before the regulations were passed in December, and there was no good reason that the Department did not take the same approach earlier.)

The decision-making lacked sufficient knowledge or foresight of consequences and it created problems for itself along the line. As one example, the Region only began to collect information on September 12 on the number of current CTP holders who would meet the eligibility criteria estimated under the August allocation procedures. Also, the lack of centralized data records on many forestry-related matters meant in this, as in other situations in 1995, requests for information were sent to Resource Management Officers (RMOs) to provide the data at the last minute. Except for the Watson Lake area, where of course the direct impact of the regulatory changes was greatest, field operations in Yukon generally were not consulted early in the process.

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[13] See Annex B for discussion of the way in which the allocation issue was handled in the Discussion Paper prepared for the consultative process.

As another example of not foreseeing consequences of decisions, we note that insufficient attention was paid to operational implications. As time went on, the regulatory procedure itself became increasingly complex and the potential implications of that complexity for extending the process seems not to have received appropriate attention. Only very late in the process did the complexity appear to penetrate, and by then, even with a compression of normal land use approval processes, the timing of timber cutting operations was further delayed.

The extreme complexity of the tiers and categories that were devised, as well as the vagueness of the criteria to be used in determining eligibility under the various categories, further exacerbated the timing of announcements of CTP approvals and delayed still further the use of CTPs in early 1996.

Only a lack of awareness of the current process of regulatory change that involves impact assessment statements and requirements for consultative processes could account for the announcement in mid-February of a consultative process and a promise of new regulations by May 1995. The Department was not ready for the consultation. It took some time to get a discussion paper for the consultation; but the greatest time gap was between the consultation process in late April and the development of the Interim Forest Policy for the first week of August. The delay cannot be accounted for by the presence of other matters for decision, such as the carryover decision.

Use of Policy Tools

The standard tools of good decision-making—critical path identification and risk analysis[14]—were regularly employed by officials at Headquarters and to a lesser degree in the Yukon. They sought to keep the timing of the process to fixed schedules and target dates. Within the narrow limits of the achievement of internally agreed upon targets (for example July for the first regulatory changes and December for the second set) the process was efficient. The response to the Liard intervention in October and November was also timely and decisive, as well.

Nature of Consultations

With respect to consultations, the process was reasonably efficient. Indeed too efficient for stakeholder groups such as the Yukon Conservation Society who, as a voluntary organization, say they require much more time than was typically allowed to respond to invitations for the expression of viewpoints.

Moderating the consultative process would have been a difficult task in the best of circumstances, given the very strong views of the industry, environmentalists, and a few First Nations. The Region showed good judgement in obtaining the services of a facilitator for the first consultative process. It does not appear to have been able to cope thereafter so easily with the very strong pressure from the Watson Lake operators, in particular. Senior management tried to run a consultative process and make the decisions at the same time and the strain of doing so made the task difficult.

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[14] Although there is a formal process of ex-post risk analysis of Land Use Planning decisions, there is no such system for CTP-issuing decisions.

The record of consultation with First Nations, other than the Liard First Nation and Tlingit is somewhat unclear. Our analysis suggests that the Regional Office made an effort to keep those Renewable Resource Councils and First Nations that expressed an interest in the issue of commercial logging informed of the process. On the one hand, there is no evidence of special effort to assure consultation with First Nations. In the case of the objections expressed by the Tlingit to the emerging forestry policy the Region displayed a reactive and somewhat defensive posture. On the other hand, some clear effort was made to provide a more prominant role to First Nations in the September 19 and 20 consultations than had been the case in earlier stages in the process.

With respect to the announcement of a Yukon Forestry Advisory Committee on August 4, no action was taken. It is reasonable to conclude that this commitment was overtaken by events in September and October. However, it is also the case that no efforts in that direction were taken later in the year.

EFFECTIVENESS OF THE PROCESS

Objectives Achievement—Short Term

Two of the three immediate objectives of the process were achieved:

- The Territorial Timber Regulations were amended to yield stumpage fees that more closely reflected a fair return to the public for the sale of a natural resource.
- The principle of collecting fees for reforestation was established, and a step was taken to collect funds for the purpose of longer-term sustainability of a natural resource.

The process did not achieve its immediate objective of generating substantial revenue from stumpage or reforestation fees in the 1995/96 logging season to contribute to cost recovery. In late November the Regional Office made a calculation that the revenue implications of the 40/60 export decision would result in approximately $3.5 million. This was based on an estimate of total volume of 450,000 m^3. In the end, however, the revenues for 1995/96 FY will be nowhere near this figure.[15]

Objectives Achievement - Longer Term

With respect to the longer run the revenue potential is greater, although exactly what levels will be achieved depends on the demand for timber in British Columbia and the price that can be fetched. It is the exported timber under both tier one and tier two that carries the highest stumpage fees and, at peak production, will generate the highest levels of revenue.

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[15] The most recent preliminary harvest data indicate that 109,000m^3 of wood were harvested under the 1995/96 carryover. We estimate that the carryover cut (stumpage fees at 20¢ plus reforestation fee at $4) will yield about $682,000 for 1995/96. The harvest in 1995/96 under the revised regulations was 56,000 m^3. Stumpage fees for CTPs issued under the new regulations will not generate more than perhaps another $400,000. The total harvest in 1996/96 was an estimated 165,000 m^3.

The realization of benefits from the reforestation fund is sometime in the future. Decisions must be made with respect to how best to use the fund for sustainable forestry development in the Territory.

Analysis of Findings

The review suggests the process does not reflect the clearest way of pursuing a policy of sustainable forestry development under conditions in which it was hoped that, sooner rather than later, responsibility for forestry would be devolved altogether. One can ask whether decision-making would have proceeded as it did if commitments had not already been made with respect to revenue generation as part of the program review process.

When the Department had to interrupt the flow of its original policy making to introduce the carryover policy, it could have adopted an interim policy that would put CTPs in the hands of those who worked the woods in 1994/95. It chose not to do so. The regulations in July and December put in place a fixed stumpage fee when one capable of reflecting changing timber prices would have been more reasonable. Apparently the use of a more flexible formula had been discussed, but statistics required to establish the formula were not available in the timeframes available.

The weakness in the decision-making process derives in part from the urgency of the situation and in large measure from the circumstances:

- The depletion of professional forestry experience in DIAND within the Region and at Headquarters in anticipation of the Forestry Transfer.

- The lack of context for making informed decisions about forestry decisions, given the inadequate information base on timber inventory and, therefore, on sustainable levels of annual allowable cut in the entire Yukon area.

- The multiple interest group arena in which public policy decisions were made, with the additional complexities of a First Nation land claim process, the unsettled status of the devolution of forestry management to the Territorial Government, and very strong opposition from an angry forest industry in Watson Lake to almost everything that DIAND proposed.

The environment for decision-making was not an easy one, but the spotty record of effectiveness of the process cannot solely be explained away in these terms.

In some significant measure, problems arose because most officials in the Yukon with greatest familiarity with forest operations fell outside the decision-making loop for most of the process. Some RMOs, for example, when later consulted responded negatively to the latest set of regulatory changes. They observed that the criteria outlined were vague, subjective or difficult to assess and they recommended a number of fairly major changes to the draft regulations. In the end, the regulations went forward with the benefit of legal advice, but with no evident input from field operations other than in the Watson Lake District.

Outstanding Issues

The review suggests that there are vagaries in the Timber Regulations that require change; that no process of implementing the reforestation has yet been identified; and that the resources available to actually implement the current Timber Regulations and the process that involves the allocation of CTPs to specific operating sites are inadequate to the purpose.

COMMUNICATIONS

Apart from the uncontrolled communication process in February with respect to the moratorium, the communication process surrounding the decision-making was adequate. From the public's perspective, the regulatory revision process began with unrealistic expectations, which the Department did not counteract until July. Standard procedures of preparing questions and answers (Q&As) as part of the Departmental briefing notes were followed for all major events and announcements.

The outcome of the two-day meeting to revise the allocation process was not well handled, however, from a communications perspective. As noted earlier, the summary of the recommendations of the meeting stated that "approximately 75,000 m^3 **is allocated**" (our emphasis) to the Liard First Nations and was circulated to all participants. If it was in fact a suggestion that was conditional on the approval of the Department, it was not conveyed in this way in the summary and it reinforced LFN participants' opinion that it had been agreed to. This proved to be embarrassing for the Department later when it refused the allocation. The result was the Liard First Nations' challenge to the procedures in October.

SHORT AND LONG TERM IMPACTS

Short Term Impacts

The clearest short term impact of the process of regulatory change was that the timber harvesting season in the Yukon was truncated. Some substantial cutting—more than 100,000 m^3 in the Territory as a whole—occurred during the period from June to December 1995 (and in fact, through a further extension into 1996). Logging operations under the new regulations yielded about 56,000 m^3.

The Department persisted in the view—which it positioned each time it addressed stakeholders' objections to the protracted process—that if the regulations could be put in place by winter the forestry industry could get back to work and the most serious economic effects would be avoided. We have tried to consult records of the monthly harvest under CTPs in previous years to establish the historical record on summer harvesting and have not been able to do so, since such monthly records do not apparently exist. However, the widely reported account both inside and outside the Department is that until 1995, summer harvesting **was**, indeed, at a low level.

The Department clearly did not intend to stop logging activity in the Yukon. The clearest evidence of that is its decision to implement the carryover provision in June, and the decision later to remove the requirement for advance payment of stumpage and reforestation fees. However unintended, there was an adverse effect on the forest industry. We view it as one of three unintended consequences of the process we have described.

It has not been possible within the scope of this review to undertake an economic impact assessment of the regulatory policy-making process on the Yukon forest industry. We would have had to obtain data on the situation before and after the process began and assess the results rigorously, taking other causes of economic impacts into account. With this qualification, however, we do note three unintended results of the process:

- Damage to DIAND's reputation with the community, and to relations with the Yukon Territorial Government, especially with the Department of Renewable Resources.

- Damage to all stakeholders' confidence in DIAND's capacity in forest management. This includes the forest operators in Watson Lake and in the Greater Yukon, conservation groups, and the media.

- Unemployment and related impacts on the community which were particularly severe in Watson Lake where the contrast of the boom economy of 1994/95 season offered the sharpest contrast with 1995/96 conditions.

Of the three unintended effects, the later deserves the most attention.

The economic impacts of the regulatory decision-making process in 1995 are especially difficult to assess because timber prices have fallen in the Yukon since 1994 and early 1995. The market for tier one lumber remains unchanged, i.e. low demand and low prices, but the profit for the exported lumber (which was to offset the losses in the tier one lumber) are now also down. With stumpage and reforestation added, the margin is now so low that many consider it to be not worth the effort.

Some of the drop in economic activity in Watson Lake would have occurred as a result of the price decline and cannot be seen as the direct result of DIAND's changes to the Timber Regulations; nor can the Department be blamed for the bitterly cold January which stopped activity in the woods. But the effect of the "on again off again process" in 1995, and the reversal of the direct allocation provision for mill owners, coupled with the changes in the application rules through October and November, led to a situation in which operators vulnerable to creditors were particularly adversely affected financially.

Many of the forest operators in the Watson Lake area, in particular, were relatively new to the industry, and must have been fairly heavily in debt for capital equipment that would have been acquired for logging operations in 1993 through 1995. Some operators have said that they incurred additional investment in anticipation of the 1995/96 year, but this appears to us to be simply one of the normal risks of doing business.

There is clear evidence from our review of job losses in areas of the Yukon forestry industry which have hitherto provided remarkably stable (or gently growing) employment. In one notable case, an operator was able to maintain his business at full employment until almost the 1995 Christmas season, but was forced into a major layoff when timber supplies dried up altogether.

Throughout the Yukon, but particularly the Watson Lake area, the loss of income is real. Following the earlier collapse of other resource industries, the effects on the community have been especially evident.

Longer Term Impacts

DIAND has laid the groundwork through the establishment of the reforestation fund for a longer term positive impact on the creation of a sustainable forestry industry in the Yukon. Other ingredients to the policy are necessary before the fund can be used effectively—especially the development of an updated inventory of forest resources.

Interestingly, this longer term outcome has been made more likely by another unintended result of the process: the Department has realized the urgent need to reestablish forestry expertise in the Region so long as the federal government is responsible for forestry. This is a highly positive development which promises to give substance to the longer term promise of some of the measures which the process described here has put in place.

SECTION 5 - CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The review of the events, decisions, actions of DIAND relating to the Yukon Forest Industry in 1995 has yielded the following major findings:

- Some features of the process and its results are positive, but the negatives are substantial.
- The positive immediate outcomes are: stumpage fees were put in place that provide a fairer return on a public resource; the principle of a reforestation fee was established; and, as a result of the experience, the Department has recognized an urgent need to re-establish forestry expertise in the Yukon.
- What was originally a relatively simple regulatory process was made too complex.
- The initial communication of the moratorium in the Region set the clock for subsequent steps in the process and compromised the ability of the Department to deliver thereafter. For nearly five months, insufficient effort was made to correct the early impression of the process being a relatively brief one. Thus, unrealistic expectations were created and then not adequately managed.
- The timing problems are related in part to an objective more concerned with revenue generation than with the sustainable development of forestry. This is reflected in the fact that there was too little forestry input throughout the process and inattention early on to the allocation issue.
- Later inattention to the operational implications of policy decisions delayed the implementation of the regulations.
- In terms of achievement of the revenue generation objective, the process was not successful in the short term. There was little revenue from the CTPs in 1995/96 and there was actually revenue lost under the Land Use Permit process, since fewer CTPs were issued than forecast and each CTP fee carries a Land Use Permit fee as well.
- Lower volumes of wood were cut in the 1995/96 season by Yukon forest operators, including the carryover, compared to 1994/95—about 50% lower.
- The regulations themselves still require further change.

The unintended impacts of the decision-making process were largely negative:

- Public confidence in DIAND's ability to manage the forestry resource was damaged.
- Relations with some Yukon First Nations were strained over what they regard as inadequate consultation with Renewable Resource Councils or objections to the Department's unwillingness to maintain the moratorium.
- Most significant was the unemployment and related impacts on the community, particularly in Watson Lake. Unemployment, loss of income, or loss of equipment to creditors are among the negative community impacts resulting from the low level of logging activity in the Yukon in the 1995/96 season.

RECOMMENDATIONS

One message to emerge from this review is the need for timber regulations in the Yukon to be placed within a broader framework of forest management policies.

It is our recommendation that: in the short and longer term, the Department should build on the solid respect in the industry and in the community for the newly appointed forestry officials who can help assure that future forest policy development is informed by operational realities. It can do this by:

- Establishing a forestry management team that combines: forestry expertise, a policy specialist/regulatory specialist, seconded from Headquarters to the Region; input from land use regulatory expertise; and an official familiar with the land claims process in the Yukon.
- Identifying an individual with clear responsibilities for liaison with the YTG on forestry-related matters (both Renewable Resources and Economic Development), who is made part of the forestry management team.
- Focusing human resources on forest inventory/administration in the Watson Lake Area. If the Department wishes to continue the approach of assigning CTPs to specific sites, the preparatory work must be done with more lead time and more experienced forestry resources.

In order to provide a more solid basis for credible, longer term forest management, the Department should consider undertaking:

- An updated inventory of forest resources that takes into account the results of land claim settlements, THAs, and cutting activity since the significant rise in CTP- based logging since 1993.

- Studies of timber quality by age group and data from forest regeneration studies are an essential precondition for determining what constitutes sustainable forest resource development in the Yukon. Until this is done, espousal of principles of sustainable development are not convincing to interested parties in the Yukon. (Ideally such information should inform the decisions to allocate AOP levels in 1996/97, but it is not realistic to expect that this information can be in place for that season.)

The Department has recognized some problems with the consequences of decisions taken in the regulatory process in 1995 and has begun to work on changes. It is our recommendation that the Department consider the following suggestions:

- In the short term, address any remaining uncertainties with the existing regulations and prepare a procedures manual that deals with all areas of interpretation of eligibility under the regulations.

- Try to find something better than a first come-first served method or the unpredictability of the draw. We suggest another serious look at the feasibility of tendered sales of CTPs.

- Finally, if the draw method is retained, a solution must be found to the "privacy" concern that inhibits needed cooperation among successful CTP applicants.

ANNEX A - DETAILS OF THE INTERIM YUKON FOREST POLICY ANNOUNCED ON AUGUST 4, 1995

STUMPAGE

Application of a two tier stumpage price model would be initiated: one for logs processed within the Yukon (tier one); and another for logs exported unprocessed out-of-territory (tier two).

Within tier one, local wood operators holding a Commercial Timber Permit (500-15,000 m^3) would be charged a stumpage price of $5 m^3 harvested for logs processed within the Yukon. Up to 25 per cent of unprocessed logs allocated to local wood operators could be exported subject to the tier two stumpage rate. Low volume wood users holding a Commercial Timber Permit (<500 m^3) would also be charged a stumpage price of $5 m^3 harvested and prohibited from exporting unprocessed logs from the Yukon.

Within tier two, wood operators holding a Commercial Timber Permit (500-15,000 m^3) and exporting unprocessed logs from the Yukon would be charged a stumpage price of $10 m^3 harvested.

Tier one sought to develop the economic base of the Yukon forest industry by encouraging a processing advantage. Tier two sought to generate a fair return to the government for the use of a public resource.

EDWARD ELIJAH SMITH REFORESTATION PROGRAM

Through the Edward Elijah Smith Reforestation Program, forest renewal on lands held under Commercial Timber Permits (volumes 500 to 15,000 m^3) would be supported by a reforestation charge of $5 m^3 harvested, collected by the federal government.

FOREST TENURE

The interim forest policy provided for a one year Commercial Timber Permit for low volume wood users harvesting less than 500 m^3 per year. A two year Commercial Timber Permit was established, for volumes between 500 and 15,000 m^3 per year, for wood that is processed in the Yukon or exported out-of-territory.

TIMBER HARVEST LIMIT

The Yukon timber harvest limit for the 1995-96 harvest season was set at 450,000 m^3. Within this limit, 250,000 m^3 of timber was to be available for local wood operators and low volume wood users. Local wood operators harvesting from 500 to 15,000 m^3 were allowed to export up to 25% of their allocated volume unprocessed from the Yukon. Low volume wood users harvesting <500m^3 were prohibited from exporting unprocessed logs. The remaining 200,000 m^3 was available for export unprocessed from the Yukon.

The 1995-96 Yukon timber harvest limit did not include wood volumes held under existing Timber Harvest Agreements (THA) or wood volumes made available through the initiation of any wood salvage operation.

ANNEX B - THE ALLOCATION ISSUE

In the process of developing the discussion paper, a curious blind spot developed—one which was to have implications in coming months. At first in all references to the discussion paper, whether in the Region or at HQ, the contents of the paper were always seen to include three items: stumpage, reforestation, and allocation of permits. The latter issue was well recognized in the memo to District Staff, Field Operations (cited above), in the observation that there was a demand to "develop a better method of allocation than first come-first served." The backlog of applications for 1994/95 in Watson Lake was testimony to this issue and likely accounts for the Yukon Region's thinking about the virtue of some type of bidding system to establish stumpage fees.

The allocation issue was still present in the second draft of the discussion paper produced in early April, 1995—but now it suggested that the continuation of the first come-first served allocation of permits occur while a longer term policy with regard to tenure was being developed. The tenure issue—while related to the allocation issue in the sense that **a new bidding method** could obviate every form of tenure other than annual tenure—is not synonymous with allocation. Yukon Region could have granted cutting rights for a two or three year period under a single CTP, without thereby determining how the logging right would be allocated to an individual in the first place.

In any case, the allocation issue as such was obscured in the published discussion paper by being placed within a discussion of the annual allowable cut:

> A portion of the annual allowable cut (AAC) limited to the total milling capacity of Yukon wood processors could be set aside to support the local forest industry. The allocation of permits could continue on a "first come-first served" basis. That portion of the annual allowable cut (AAC) in excess of the amount set aside to support the local forest industry could be open for export to out-of-territory wood processors.[16]

In this way, two issues—a two tier system, one for local production, the other for export, and the allocation process for the permit itself—were melded.

The confusion led to some weakness both in the input DIAND received on the subject from the forest industry and in the clarity of its own decision-making with respect to the changes in the regulations. So long as only the dollar value of the revenue increases was the focus of attention, the eventually much more difficult issues around allocation lay partially hidden.

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[16] *Discussion Paper on Policy Changes to Stumpage Pricing, Reforestation and Forest Tenure in the Yukon*, DIAND, 21 April, 1995, p.3.

Terms of Reference

TERMS OF REFERENCE

REVIEWS OF THE DIAND FORESTRY DECISION-MAKING PROCESS

BACKGROUND: The recent world and North American demand for lumber and the limited availability of standing timber in B.C. has resulted in unprecedented attention directed towards Yukon forest resources. Only two years ago, there were approximately 30 to 40 commercial timber permits for sawlogs issued to harvest less than 50,000 cubic metres of wood. In 1995, there were 1,300 applications for the 450,000 cubic metres of available sawlog timber. At the same time legitimate concerns about sustainable development and new processes resulting from environmental legislation and land claims have added additional demands in the processes of approving applications.

In March of 1995, the two year effort to devolve the forestry program to the Yukon Government collapsed. Over the previous year in anticipation of devolution, virtually all of the department's professional staff managing the program had left and were not replaced. The Yukon region was not authorized until well into 1995 to replace staff other than on a term basis. Indeed it was the expectation that the stall in devolution was temporary and that the program would be gone by the fall of 1995 early 1996.

The spring 1995 budget signalled that Yukon stumpage rates would be increased from the existing $.20 m^3 to a rate more in line with what the provinces were charging for the use of a public resource. A moratorium on granting any further Commercial Timber Permits (CTPs) was put in place because of the demand for timber, concern regarding sustainability of the resource and until stumpage rates could be officially increased through an amendment to the Yukon Timber Regulations (YTR).

In order to address some of the immediate problems confronting the management of the industry, a discussion paper was released by the Department which addressed a number of concerns raised by the Industry and other Yukon interests. These included tenure, stumpage and reforestation. Consultations were held with industry, Yukon Territorial Government (YTG), First Nations and the public that concluded: a) that a two tier stumpage system be established with one stumpage rate for logs processed in the territory and another for logs exported for processing b) that a contributory reforestation process be established, and c) that CTPs be issued for longer than one year.

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These discussions were aimed at amendments to the regulations and the timeline for these amendments was early July so that permits could be issued immediately afterwards allowing the industry time to prepare for winter cutting. Amendments to the YTR based on the consultations were passed July 27, 1995 and implemented on August 4, 1995.

An unprecedented 1,300 applicants responded for a volume of only 450,000 m^3 for 1995 timber. In order to manage the demand it was decided in September of 1995 that the CTPs would be allocated by lottery. Industry immediately expressed concerns that its members could not accept the risk imposed by a lottery of not getting a CTP. The industry's position was, that with so much invested in the Yukon forest industry it now stood a good chance of losing these investments as a result of bank foreclosures on equipment if they were not successful in the lottery.

The lottery system was rescinded in early September and new consultations were again carried out with stakeholders to come up with an allocation system that did not put the industry at risk. A new allocation system was developed and it was announced that timber allocations under the new process would be made on November 9. Just prior to the November 9 allocation, the Liard First Nation challenged the allocation process maintaining it was outside what was provided for in the YTR. As a result, government delayed the announcement of timber allocations. Further consultations were held and it was decided that additional amendments to the Timber Regulations were required to ensure the appropriate authorization was in place for the process of allocations discussed in October.

The YTR were amended on December 7 to allow for CTPs to be issued. In the meantime the logging industry had difficulties because of the delays in the allocation of timber. Once timber is allocated, operators have to layout their proposed cutblocks and prepare an annual operating plan that requires environmental assessment before a Land Use Permit and a CTP can be issued. This means that industry lost a significant portion of the winter's cutting season.

NEED: A departmental review is required for senior management on the events, process and decisions made leading to the moratorium and subsequently, and the effectiveness of those actions relative to the forest industry in the Yukon.

SCOPE: The exercise will be comprehensive in its review of the events, decisions and actions taken that have led to the current situation regarding the Yukon forest industry.

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ISSUES: The issues to be addressed in the review are:

- What is the context in which the decision-making process took place (eg: what was the rationale and objectives for declaring a moratorium and what factors influenced the process?)
- How and when were principal decisions taken and communicated in relation to stumpage reforestation, tenure, the moratorium, system of allocation and regulatory change?
- What was the process and associated activities for revising the Yukon Timber Regulations? (eg: How were decisions made, what analysis was undertaken and how were the policy options arrived at?)
- How effective and efficient was the decision-making process (eg: objectives achievement, timeliness)?
- What were the strengths and weaknesses of the process?
- What corrective actions need to be taken to ensure that permits are issued in a timely manner and that the Yukon's Forest Resources are managed in a way which promotes sustainable development?

APPROACH: The review will be undertaken by the Departmental Audit and Evaluation Branch (DAEB) with the use of a consultant. Interviews will be undertaken with key participants within the process, both internal and external to the Department. These will include representatives of the Yukon Forest Industry, and participating First Nations. File reviews will also be undertaken at DIAND headquarters and at the Yukon Regional office. As part of the data collection process, a workshop will be held with the key stakeholders to review initial review findings.

TIMEFRAME: A draft report of the review will be completed by April, 1996 and a final report will be tabled in May, 1996.

RESOURCES: It is estimated that the review will cost approximately 30 to 40K. The program will be responsible for these costs.

APPROVED BY:

John Rayner
Assistant Deputy Minister
Northern Affairs
February 8, 1996

Action Plan

TO IMPROVE FORESTRY MANAGEMENT IN THE YUKON REGION
Revised August 23, 1996

In November of 1995, the Assistant Deputy Minister, Northern Affairs Program of the Department of Indian Affairs and Northern Development (DIAND), in an effort to learn from the events, decisions and actions relating to the Yukon forest industry in 1995, committed to a review of the period. Earlier this year DIAND's Audit Branch hired a consultant who met with key participants, both internal and external to the department, in preparing a report.

To enhance the process of decision-making in the Yukon on forestry related issues, DIAND has and will continue to organize its human resources and administrative structures to deliver an effective sustainable forest management program.

DIAND recognizes the need for long term sustainable forest management practices. The Yukon Region Office is developing a discussion paper on sustainable forest management in the Yukon to be released to the public this fall for consultation purposes, in preparation for developing a policy document. This initiative is being coordinated with Government of Yukon (YTG) officials and is in keeping with the federal government's commitment to sustainable development as well as with the spirit of the Yukon First Nations Land Claim Umbrella Final Agreement.

The Yukon Forest Advisory Committee, established by the Minister as part of the Interim Forest Policy, is assisting DIAND in the development of a reforestation program. The department will also consult with the Committee in the development of a Yukon sustainable forest management policy. The committee has held a number of meetings to date.

DIAND remains committed to increased discussion and collaboration on key forestry issues with YTG, First Nations, forest industry representatives and other stakeholders.

In response to events that occurred during the period of the review and in response to the review recommendations, DIAND has made a number of management commitments that have been completed, are ongoing, or are to be implemented, as set out below.

It is recommended that the department build solid respect in the industry and in the community for the newly appointed forestry officials. This can be done by addressing the following recommendations:

1. RECOMMENDATION

Establishment of a forestry management team that combines: forestry expertise; a policy/regulatory specialist seconded from Headquarters to the Region; input from land use regulatory expertise; and an official familiar with the land claims process in the Yukon.

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MANAGEMENT COMMITMENT

The Regional Director General initiated a reorganization of the Forest Resources Program in 1995 with the addition of 12 new positions which were agreed to by the department. The new structure is designed to increase forestry expertise in silviculture, forest economic development, inventory, mapping and forest protection, forest resources and land claims inplementation, and will integrate all aspects of forest management including the fire protection program.

Staffing of 10 proposed positions to be completed by October 1996 are: Forest Ecologist, Silviculture Forester, Silviculture Technician, Party Chief, Chief Scaler, Forest Practices Forester, Forest Health and Watershed Forester, GIS Technician, two Assistant Resource Management Officers, and a Forest Policy and Industry Development Forester.

Headquarters has provided, during 1996, additional policy expertise to span Forest Resource Management and the general management of the Northern Affairs Program.

The Director of Renewable Resources will be responsible for improving the coordination between Land, Water, Forest Resources and Management in policy and program development.

2. RECOMMENDATION

Identify an individual with clear responsibilities for liaison with YTG on forest-related matters (both Renewable Resources and Economic Development), who is part of the forestry management team.

MANAGEMENT COMMITMENT

In 1995 the Regional Director General indicated that the position of the Regional Manager of Forest Resources is the principal link with YTG's departments of Economic Development and Renewable Resources on forest-related matters. Formal and informal liaison mechanisms have been established to maintain communications and develop a working relationship with both territorial departments.

3. RECOMMENDATION

Focusing human resources on forest inventory/administration in the Watson Lake area. If the department wishes to continue the approach of assigning CTP's to specific sites, the preparatory work must be done with more lead time and more experienced forestry resources.

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MANAGEMENT COMMITMENT

As a result of the reorganization of staff in Field Operations and Forestry, the Regional Manager of Field Operations will increase staff in the Watson Lake Office by the end of October 1996. The Regional Manager of Forest Resources will ensure that regional foresters in Whitehorse work closely with district staff to improve the process of pre-assigning forest harvesting polygons. DIAND has and will continue to direct funding towards site specific forest inventories.

In order to provide a solid basis for credible, long term forest management, the department should consider undertaking the following:

4. SUGGESTION

An updated inventory of forest resources that takes into account the results of land claim settlements, Timber Harvesting Agreements (THAs) and cutting activity since the significant rise in 1993 of Commercial Timber Permit (CTP)-based logging.

MANAGEMENT COMMITMENT

To provide a solid base for long term sustainable forest management, Forest Resources will prepare forest management plans for Forest Management Units (FMU) in the Southeast Yukon (YO-1, YO-2, YO-3) and Haines Junction (YO-6). It will take the department three to five years to complete the process for all four FMUs. A start has already been made on work from previous plans. The plans will include improvements to the existing inventory information and areas to be excluded from application under CTPs, such as Land Claim Settlement areas, THAs, cut over areas, riparian protection areas and other areas of significant resource values.

5. SUGGESTION

Studies of timber quality by age group from which forest regeneration information is developed, is essential for determining what constitutes sustainable forest development in the Yukon. Until this is done, espousal of principles of sustainable development are not sufficiently convincing to interested parties in the Yukon. (Ideally such information should be available for decisions on the allocation of Annual Operating Plans in 1996/97, but because data is being collected in 1996/97 this information cannot be in place until the 1997/98 season.)

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MANAGEMENT COMMITMENT

Forest Resources has established permanent sample plots throughout the Yukon which will generate information on growth rates, health, age, soil and site characteristics, volume and species. During 1996, Forest Resources will conduct a study on wood quality in relation to possible economic development of Yukon forests.

The Department has recognized negative consequences from decisions made in the 1995 regulatory process and has begun to work on changes. It is recommended that the Department consider the following suggestions:

6. SUGGESTION

The department, in the short term, address any remaining uncertainties with the existing regulations and prepare a procedures manual that deals with all areas of interpretation of eligibility under the regulations.

MANAGEMENT COMMITMENT

Forest Resources will continue to work with industry and stakeholders to optimize procedures within the context of existing regulations. Forest Resources will also update the procedures manual and discuss any requirements for regulatory changes with YTG, industry, First Nations and other key stakeholders. During 1996, DIAND will review regulations and procedures concurrent with the development of new forest policies.

7. SUGGESTION

The department try to find something better than first come--first served method or the draw (method). We suggest another serious look at the feasibility of tendered sales of CTPs.

MANAGEMENT COMMITMENT

DIAND, in consultation with the Yukon forest industry, YTG and key stakeholders completed a priority allocation method for 1996/97. Forest Resources will develop a comprehensive forest management policy to address aspects such as tenure, allocation methodology, open bid above a set rate, export limits, infrastructure support, regulatory/legislative changes, and other appropriate topics.

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8. SUGGESTION

If the draw method is retained, a solution must be found to the "privacy" concern that inhibits needed cooperation among successful CTP applicants.

MANAGEMENT COMMITMENT

The Regional Manager of Forest Resources will continue the practice undertaken in June 1996 to include an applicant release form in the allocation package presented to CTP holders which makes permit information more available to CTP holders.